COURT OF APPEALS
DIVISION II

2016 FEB 18 AM 11:58

STATE OF WASHINGTON

NO. 47492-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

In re the matter of

Jeremiah J. Larsen Appellant,

vs.

Rebecca A. Bamberg (FKA Larsen)
Respondent.

BRIEF OF APPELLANT

Jeremiah J. Larsen 3270 Oak St Longview, WA 98632 (360) 931-9655

I. TABLE OF CONTENTS

		P	age
TABLE (OF C	ONTENTS	.I
INDEX O	OF A	UTHORITIES	ii
		Table of Law	ii
I.		INTRODUCTION.	
II		ASSIGNMENT OF ERROR.	
11	1.	ISSUES PERTAINING TO ASSIGNMENT OF ERROR.	
IV	V .	STATEMENT OF THE CASE.	
		1. Factual History	
		2. Procedural History	
V	•	ARGUMENT.	
V	I.	CONCLUSION.	
V	II.	APPENDIX.	

INDEX OF AUTHORITIES

m 11 Ar	••
Table of Law	11
Taule of Law	

RCW 26.18.190 Compensation paid by agency, Social Security Administration on Children's behalf

RCW 26.19.080(3, 4) Day care not incurred

RCW 43.215.010 Definitions re: Day care

RCW 43.215.250 License Required

ER 801 Hearsay definitions (a),(b),(c),(d,(1))

ER 802 Hearsay Rule

ER 804 Hearsay exceptions((b,(1),(3)))

ER 901 Requirement of Authentication

ER 902 (11, 12)

ER 904 (a,(6))

CR 59 New trial, Reconsideration, and Amendment of Judgments

CR 60 Relief from Judgment or Order

Case Law:

No. 26718-7-III. Re: Daniel E. FAIRCHILD, Appellant, V. Janis E. DAVIS, f/k/a Janis E. Fairchild, Respondent.

No. 25658-8-III Re: Ritchie Norman, Appellant, V. Julie Fairbanks

No. 55926 - VI Re: Henry L Pollard, appellant V. Felicia A. Pollard,

Respondent

Other case law

INTRODUCTION

This is an appeal from the Day Care judgment entered by the Trial Court in Cowlitz County, Washington on February 23, 2015 with Jeremiah J. Larsen (hereinafter Appellate) presenting as pro-se and Rebecca A. Bamberg (FKA Larsen, hereinafter Respondent) appearing through Jamie M. Foster Attorney at Lawonly as Respondent never personally appeared before the court, therefore neither Respondent nor her work schedules or day care documentation were made subject to cross examination. (RP pg(s) 106 – 148)

This day care order is a continuance from the Child Support re-trial which took place on May 9, 2014 and was entered on May 23, 2014 with Judicial Officer Marilyn K. Haan presiding. Appellant appeared in person with Noelle McLean Attorney at Law representing as his council and Respondent appeared and presented as Pro-se. However no final ruling was entered until 2/23/2015. (RP 4 – 105).

This re-trial comes after the Court of Appeals Division II made an unpublished ruling Vacating the dispute resolution language in the parenting plan and previous Child Support Order in its entirety on October 8, 2013 (No. 43025-8-II). These orders were remanded back before the Trial Court in Cowlitz County, WA for correction due to abusive use of discretion, and

failing to give Appellant credit for Social Security dependency benefits paid to each child on his behalf in compliance with RCW 26.18.190.

However, rather than correcting the child support order and awarding the Appellant \$3,434 credit for his over payment of child support as stipulated in the child support order, the Trial Court prejudiced against Appellant and circumvented the Appellate Court's ruling by telling the Appellant to "just consider day care as extended spousal support", then granted Respondent an extraordinary amount of time to manufacture day care documentation although she had previously informed the court on record that she did not

have nor could she provide such documentation and awarded Respondent

day care expenses regardless of the facts.

BRIEF OF APPELLANT - 5

By and Through Noelle McLean, Appellant responded, objected and argued facts relevant and sufficient to prevail over the day care judgment however during the presentation hearing Trial Court Judicial Officer

Marilyn Haan granted Respondent 3 more additional weeks to manufacture day care documentation even after Respondent repeatedly failed to timely provide her work schedules and day care receipts. Further, Respondent previously stated in her own declaration(s), "Incidentally, all day care for which I request reimbursement are paid for in cash or bartered massage services." Respondent also repeatedly admitted on record during trial that

she could not provide such documentation. Judge Haan then removed herself from needing to be the presiding judge to hear the continuing matter which creates a prejudice of it's own.

In February 2015, Respondent filed a motion for payment of day care expenses. Appellant argued and raised several objections including Judicial jurisdiction in accordance with the UCCJEA, Hearsay in accordance to ER 801, 904(a(6),(C)), and Respondent's own previous statements made on record and in her declarations.

After Trial Court entered the final judgment regarding Respondent's day care award which circumvented the Appellate Court's ruling and Appellant's child support over payment, Appellant gave the Trial Court several opportunities to reconsider their decision. Trial Court denied each motion to reconsider, although Appellant's motions are based on relevant facts and laws pertaining to the matter therefore, Appellant timely filed his 2nd appeal here.

ER 801, 904(a(6),(C)), RCW 26.19.080(3), RCW 26.18.190, CR 59, CR 60 (CP #'s 280, 295, 297, 300, 302, 304, 308, 310, 312, 314, CT minutes Re: 5/9/14 & 5/23/14 hearings, 317, 324 – 328, 331, 334, 335, 337 – 340, CT minutes Re: 2/2/15 hearing, 344, 346 – 349, 351, 352, 355 – 360,

CT minutes Re: 3/23/15 hearing, 364, CT minutes 3/30/15 hearing, CT minutes Re: 4/6/15 & 4/13/15 hearings, 366. (RP pg(s) 1 – 83 (Re-trial), (RP pgs 84 – 105 (Presentation Hearing) (RP pg(s)106 – 119 (Daycare motion), (RP pg(s) 120 –124 Presentation hearing), (RP pg(s)125 –130 Motion for relief, (RP 131 – 148. 2nd Motion for Relief).

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1.

The trial court erred when it admitted exhibits 1-13 off the record which prevented all related discussion from being included in the Verbatim Report of proceedings. Trial Court addressed Appellant personally off the record right after she returned from recess and stated "I'm going to order day care expenses. Mr. Larsen, just consider day care as extended spousal support. (Appellant was unaware this was off the record as his attorney was seated next to him and stopped him twice when he attempted to object.) (RP 65 Lines 16 & 17, [p.81 Line 11, p.82 Lines 23 – 25, Both times, I was attempting to object Judge Haan's statement.] Further, Respondent lies about submitting day care documentation to Child support enforcement in effort to cover up the lack of documentation (work schedules & receipts), and as Ms. McLean argued regarding day care documentation, the court

began to essentially team up with Respondent to the point where Ms. McLean had to tell the court "This is not supposed to be trial by ambush." RP pages 58 line 3 – pg 62 Line 23. After trial presentations, Mrs. McLean gave appellant some sound legal advice regarding this matter and informing Appellant that she wouldn't be able to continue the case if the parties were unable to resolve this matter outside of court. Ms. McLean filed her notice of withdrawal after the parties were unable to resolve this matter outside of court. (RP pages 58 line 3 – pg62 Line 23, RP pages 65 Lines 16 & 17 pg. 81 Line 11, pg. 82 Lines 23 – 25, pg. 109 Line 6 – pg. 117 Line 4, pg. 132 Line 22 – pg. 146 Line 2 (Other prejudicial connotations: RP pg. 4 Lines 1 & 2), (pg(s). 6 Line 7 - pg. 23 Line 20), (pg. 33 Line 4 - pg. 34)Line 20), (pg. 37 Line 6 – pg. 49 Line 14, pg. 51 Line 11 – pg. 65. Line 17, 69 Line 21 – page 79 Line 12, pg. 92 – 105. (CP 280, 295 pg(s) 7 -12, 302, 304, 308, 324 – 328, 329, 334, 331, 337 – 340, 344, 346, 347, 351 – 353, 355, 356, 357 – 360, 364, CT minutes 3/23/15, 3/30/15, 4/6/15, 4/13/15.)

Assignments of Error No. 2.

The trial court erred in determining that it had retained jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. (UCCJEA).

(RP pg(s) 109 line 19 –117 Line 4.) pg.132 Line 22 – pg.146 Line 2.

(CP #'s 334, 337, 338, 339, 340, CT minutes Re: 2/23/15 hearing, 344, 346, 347, 348, 349, 351, 352, 355, 356, 357, 358(pg(s) 7-12, 365, 366.

Assignments of Error No. 3.

The trial court erred in admitting Respondent's day care receipts and work schedules as these documents are not authentic under ER 901 and lack any guaranties of trustworthiness under ER 904(a,(6) therefore these documents are inadmissible hearsay under ER 801(c, d (1). Neither Respondent, Respondent's documentation, nor any of her "Day care provider's" have ever been subject to cross examination and trial court based the day care award on that evidence. CR 59, CR 60, RCW 26.19.080(3) ER 801, ER 901, ER 904 (6,(c) CP #'s 280, 295, 297, 300, 302, 304, 308, CT minutes 5/9/14 & 5/23/14, 324 – 329, 334, 331, 337 – 340, 344, 346, 347, 348, 351 – 353, 355, 356pg(s) 7 – 12, 357 – 360, 364, CT min 3/23/15, 3/30/15, 4/6/15, 4/13/15.) RP 58 Line 3 82 Line 3, RP page85 – pg105, pg107 – 146 Line 2 (Pg 124 Line 12 regarding Respondent's husband charging for day care, Appellant said Deplorable not applaudable.)

Assignments of Error No. 4.

Trial court erred by imputing Respondent's wages to below the scheduled income bracket for the second time without actually knowing what the Respondent's income is, as full disclosure of authentic work related documentation has never been provided to Appellant or the court with current wage stubs, or income documentation for her private practice. The only wage stub Respondent submitted from her current employer was in November 2013 as shown in CP 280. Trial courts error transfers further by ordering Appellant to pay a significantly higher amount of the proportionate share of expenses based off trial courts discretion, especially in 2012. Respondent reportedly earned 799.00 per month in 2012 working for Massage Envy. However Respondent reports that she was earning \$15.00 per hour during her employment with Massage Envy from 2011 - 2102. Based off her work schedules from Massage Envy CP 334, exhibit 2 Respondent worked 18 hrs per week. $(18 \times $15 = $270.) (270 \times 4.3)$ weeks each month = \$1161 per month.) This is significantly more than 799 and this information is what Respondent provided to the court only well after the child support order was effectuated. This is the only documentation provided by Respondent that has any guaranties of trustworthiness ER 904 (a, 6) or meets the requirement of Authentication ER 901. Since this information was available to the court and argued by Ms. McLean for

Appellant, trial court abused its discretion by not considering the facts.

ER, 901, ER 904 (a,6), RCW 29.19.080(3), RP pages 5 Line 9 – 23 Line 20,

RP pgs 33 – pg 49 Line 10, RP pages 51 Line 11 – 62 Line 23.

65 Line 17 – 82 Line 3, 85 – 105, 107 - 154

CP #s 295, 297, 298, 300, 308, CT minutes 5/9/14 & 5/23/14, 324 - 328,

331, 334, 335, 337 - 340, 344, 346 – 349, 351, 352, 356 - 360, 364, 366.

Assignments of Error No. 5.

The Trial Court further erred in ordering a judgment of \$3302.46 against appellant to pay for respondent's day care that is not actually being incurred. Respondent states several times "Incidentally, all day care for which I request reimbursement are paid for in cash or bartered services. Historically I've bartered using other skills I possess for childcare." CP 295 & 356.

"I have certain individuals who watch the two children and a receipt is provided for that care. The costs of that care are then provided back to me as payment for massage services." CP 334 pg 5 & 6.

"I will tell the court that I use a number of day-care providers for the children, all of which have been provided to Respondent in the past, and pay for this care. The payment of this day care is necessary to ensure that the children continue to be well cared for while I work." CP 364 pg 4

Respondent has never informed Appellant of said care provider's although this has been requested numerous times over the last 5 years. It is always the same he said she said song and dance. As the children's father I have a right to know this information. Again Respondent's documentation is not sufficient as Authentic Under ER 901, has no guaranties of trustworthiness Under ER 904 (a, 6) and is Hearsay under ER 801(c),(d, (1) Finally, none of Respondent's statements or documents have been made subject to cross examination. RP 33 Line 13 – 49 Line 15, 51 Line 11 – 81 Line 3, 85 – 105, 107 – 146. CP #'s 280,295 & 356, 297 – 300, 308, CT minutes 5/9/14 & 5/23/14, 324 – 328, 331, 334, 337 – 340, 344, 346, 347- 349, 351, 352, 355, 357 -360, 364, 366. CT minutes 2/2/15, 2/23/15, 3/23/15, 3/30/15, 4/6/15, 4/13/15.

III ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

STANDARD OF REVIEW

.... The decision to admit evidence lies within the trial courts discretion. A court abuses its discretion when it misapplies the law or predicates it's decision on incorrect legal principles. Review is for abuse of discretion.

State v Powell, 126 Wn 2d 244, 258, 893 P,2d 615 (1995)

1. Based on the factual information given The trial court erred by marking the exhibits and having discussion relevant to this matter off the record and further by addressing the Appellant personally telling him to just consider daycare as extended spousal support. First of all Daycare and spousal support are two completely separate issues. Secondly spousal support was never awarded in the first place because the parties did not have a long term marriage. This was an abusive use of discretion and would substantiate Appellant's claim that the judicial officer approached the bench with a predetermined decision without actually considering all the facts and testimony. Even during Respondent's testimony in trial, Respondent contradicted herself regarding her income. Ms. McLean, raised several concerns regarding this matter. (1. Respondent states "We struggle when we're not getting child support, but we make it happen." however she fails to address the fact in her financial declaration she receives \$416.00 month from SSD for children on Appellant's behalf. (2. She gives \$370 month in charitable contributions, then changes her story stating "I think that might have been per year." then upon further questioning, changes her story again

stating "Yeah, those are actually my husbands donations". Then further contradicts herself when she admits that her financial declaration didn't include her husband's income.

This is found on RP pages 39 Line 21 – 41 Line 19. Had the trial court been listening and considering the relevant facts, The Court would have taken these statements, and seriously considered the facts as this matter has once already been before the Court of Appeals and remanded back for abusive use of discretion. Instead the court grants Respondent both child tax credits, allows her to continue home-schooling which is another argument and gives Respondent an additional 3 weeks to manufacture documentation after Respondent fails to timely follow the courts orders and informs the court she doesn't have required documentation. Please further note that Respondent has never provided an authentic work schedule to the court and she has only provided 1 actual pay stub from Contour Chiropractic and that was in December 2013 – (CP 280)

RP pg(s) 77 Line 19 - 79 Line 12. (The full discussion is on RP pages 33 Line 9 - 49- Line 15). (Assignment of Error 1.)

Whether the court has authority pursuant to UCCJEA to exercise
 BRIEF OF APPELLANT - 14

jurisdiction is a mixed question of law and fact. The court defers to the superior courts unchallenged factual findings, but review de novo its legal conclusions. In re Marriage of McDermontt, 175 Wn App 467, 307 P3d 717 (2013). The appellant filed a motion to transfer the case pursuant to RCW 26.27.011 asking the court to transfer the case to the State of Oregon for further proceedings based on a lack of continued jurisdiction. The appellant reiterated the uncontested fact that the appellant, the respondent and the children had all moved to Oregon and none of the parties had resided in or had substantial interaction in Washington for more than 1 ½ years. (Please note that Respondent and the children moved to Oregon more than 4 years prior.) The court acknowledged that all of the parties, including the children were no longer residence of the State of Washington, and acknowledged that all parties, including the children had been residing in the State of Oregon for more than 1 ½ years but determined that it still had jurisdiction, that it would continue to have jurisdiction and declined the appellants alternative request to transfer the case to Oregon based on RCW 26.27.261 A party may raise lack of subject matter jurisdiction at any time during a proceeding, and failure to raise

Surveyors & Eng'rs LLC v Friends of Skagit County, 135 Wn

2d 542, 957 P.2d 962 (1998). A judgment is void if the entering court lacked subject matter jurisdiction. In re Custody of A.C.,

165 Wn 2d 568, 200 P.3d 689 (2009). The UCCJEA constrains a superior court's subject matter jurisdiction, In re Parentage of Ruff, 168 Wn App 109, 275 P.3d 1175 (2012). Thus, parties cannot consent to or waive their objection to jurisdiction under the UCCJEA, and a party may raise a jurisdiction objection under the UCCJEA at any time. Supra.

The UCCJEA states: "A court of this state that has made a child custody determination consistent with [the UCCJEA's jurisdiction requirements] has exclusive jurisdiction over the determination until:

A court of this state determines that neither the child, the child's parents and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state. RCW 26.27.211.

The court failed to address any of these facts and made only a cursory determination that it had continuing jurisdiction in this matter. However it is not clear how the court could make this determination given that the following facts were uncontested

and clearly established: 1) the children were not and had not be residents of the State of Washington for more than 4 years. 2) Both parents were not and had not been a resident of the State of Washington for 1 ½ years. 3) None of the parties had a significant connection, outside of this case, with the State of Washington, 4) No substantial evidence was available in the State of Washington. - It is worth noting that in September 2014 and in efforts only to reveal the truth as to whom provides daycare for the children. Appellant had to hire a Oregon Licensed Private Investigator. Respondent never revealed any information to Appellant as to who provides care for the children yet she continued to send Appellant monthly bills until the PI report was complete and filed on March 4, 2015, which again revealed the only day care she had was her parents and her husband. Upon this report, Respondent changed her story stating she was only attempting to collect day care through June 2014, insinuating that the situation had changed. This appears to be a pattern of behavior as Respondent did the same thing during her trail testimony with Ms. McLean. Even if things had changed, Appellant should have been notified and was not. Because these "providers" were in Oregon, and because they were not residents of Washington they were not subject to subpoena. Had the case been transferred then the appellant

could have subpoenaed them and questioned them about the day care receipts. All of the necessary determinations established by the UCCJEA to provide jurisdiction were dis-positive to the courts continued jurisdiction in this matter.

The court erred when it determined that it had continued subject matter jurisdiction.

(RP pages 109 line 19 – pg.110 Line 7, pg.74 Line 5 – 105 Line 15.)
(CP #'s 324 – 328, 331, 334, 337, 338, 339, 340, CT hearing minutes, 344, 346, 347, 348, 349, 351, 352, 355, 356, 357, 358, 365, 359, 364, 366 (Assignments of Error 2.)

3. Neither Respondent, Respondent's documentation, nor any of her "Day care provider's have ever been subject to cross examination as she never personally appeared for any of the day care hearings.

Furthermore, Respondent never provided so much as a declaration from any of her "Day Care providers to prove that this money is actually being paid to somebody other than herself. Not even so much as a declaration from her mother was provided. As stated above the Respondent first claimed in her declaration that she had no receipts for day care expense because she paid in cash for some day care expense and in barter for others. The trial court granted

the Respondent additional time to produce the documents, however, rather than produce the documents the Respondent manufactured them. Except for the work schedules from Massage Envy which were all printed on the same day on 5/24/14 (the day after the re-trial and back dated from April 2012 - August 6, 2012 to make it look like real time), the rest of Respondent's work schedules are unprofessionally written with 4 **MONTHS** of employment written on each page without any specified days (Monday ect...), or verifiable hours of time in/out. Couple this with receipts that any person can purchase at the store, along with Respondent's declarations stating "incidentally, all day care she paid in cash or bartered services and it equals the perfect sham that only a prejudicial court would consider admissible. CP 334 (All pages). The appellant submitted written objections to the evidence establishing that the receipts were hearsay and that that could not be an exception to the hearsay rule because they lacked reliability.

It was clearly established in *IN RE MARRIAGE OF Daniel FAIRCHILD*, 207 P.3d 449 (2009) 19 " The statute is quite clear RCW 26.19.080(3). is a reimbursement statute, not a set-off provision for reducing unpaid debts".

"One has to pay in order to play. Mr. Fairchild has not paid. He does not get to play". In this case, Appellant has paid (over paid) therefore he gets to play. The parent seeking reimbursement for day care expenses must produce adequate proof of incurred expenses in order to prevent a windfall. In this case the receipts, if they were admissible, would only establish that no actual expense had been incurred. Because the Respondent did not pay for the day care the appellant is not required to pay for hypothetical expenses based on what the respondent believes to be fair value for her time. The respondents own claims and receipts make it clear that she is attempting to abuse the day care award to produce a "windfall" income for herself in lieu of spousal support. Appellant and respondent agreed, that Respondent would be allowed both child tax exemptions as long as the appellant would not be financially responsible for any expenses regarding home schooling. Daycare expenses are also to be included in this provision however, due to Respondent's trickery during the trial on 12/22/11 where Respondent served Appellant different documents than the court, Appellant was blindsided and has been constantly facing litigation for the last 5 years attempting to seek some relief. Trial Court is aware of this

fact and yet every time Respondent requests the court to extrapolate more money from him the court grants her wish as if they are her genie. Appellant pays more than 50% of the children's proportionate share of expenses and has joint custody. Respondent should not be allowed to manufacture documentation in efforts to extrapolate day care from Appellant, neither should she be allowed to breech the parties home-school agreement granting her both child tax credits. The trial court did in fact error when it determined this to happen. RCW 26.19.080(3), RCW 26.18.190, CR 59, CR 60.

(Assignments of Error 3)

1. Did the Trial Court error by imputing Respondent's wages lower than the amounts stipulated in the child support schedule thus ordering Appellant to pay Respondent a larger proportionate share of day care expenses in addition to awarding Respondent both child tax credits without giving any consideration to the fact that Appellant was railroaded by Respondent's home-school sham and in efforts to extrapolate as much money as possible from Appellant? Did the court do so while Appellant on a disability income and without considering all the facts regarding

Respondent's day care documentation (or lack thereof)? Did the trial court further error by allowing Respondent to home-school the children because the court of Appeals up held the previous ruling. Does this prove to be a further prejudice against appellant because The Court of Appeals only declined to rule on the issue because it was not preserved as Appellant did not object at the time of original trial on 12/22/11 and the fact has been discovered this was only because of Respondent's trickery during the trial on 12/22/11, where Respondent served Appellant different documents than what was filed with the trial court. Trial Court is fully aware of this fact but has done nothing to correct the injustice that has been done. The decisions of the trial court have consistently proven to be prejudice and harmful to Appellant whom is on a disability income. This is an abusive use discretion and the trial court erred by continuing to abuse their discretion against appellant. (Assignments of Error 4) RP pages 5 Line 9 – 23 Line 20, RP pgs 33 – pg 49 Line 10, RP pages 51 Line 11 - 63 Line 23, CP #s 295, 297, 298, 300, 308, CT minutes 5/9/14 & 5/23/14, 324 - 328, 331, 334, 335, 337 -340, 344, 346 – 349, 351, 352, 356 - 360, 364.

Did the Trial Court error by ordering a judgment of \$3302.46 plus 12% interest against appellant. Appellant testified in trial and filed documents that show that Respondent's personal declaration(s) and documentation support the fact that she self-manufactured her work schedules and day care receipts in efforts to pad her own pockets using the children as a weapon in her attack against Appellant. There have been several issues raised in trial and other motions Appellant has sought for relief before taking this matter to this level. Based on Respondent's own testimony, and sworn statements, the trial court erred by ordering Appellant to personally pay Respondent day care that is not actually being incurred nor accruing. Assignments of Error 5 ER 801 – 804, 901 - 904(a(6),(C)), RCW 26.19.080(3), RCW 26.18.190, CR 59, CR 60.

RP 26 line 1 – 49 line 15, RP 58 Line 3 – pg 83, pg 85 – 105, (specific testimony RP 45 line 10 – 49 line 15). (CP 280, 295, 298, 308, 324 – 328, 334, 335, 337 – 340, CT hearing minutes re: 5/9/14 & 5/23/14, 2/02/15, 2/23/15, CP 344, 346, 348, 349, 351, 352, 355, 356, 357, 358, 359, 360, 365, CT Hearing Minutes & order on motion.)366.

IV. STATEMENT OF THE CASE

1. **Procedural history** is as follows:

On January 9, 2012, Jeremiah Larsen filed and appealed from the orders entered on December 22, 2011.

This matter was remanded on October 8, 2013, whereby the Court of Appeals found that the Trial court abused it's discretion for not granting Appellant child support credit for Social Security child dependency monies paid on his behalf for the minor children in this matter, For failing to consider a downward deviation in the whole family formula and for ordering Appellant to pay for a dispute resolution process although it had been previously ruled that no such services were readily available in the jurisdiction and Appellant couldn't afford the services he was ordered to pay. # 43025-8-II, COA Mandate and Unpublished Opinion – pgs 1 – 18.

Upon remand, a new Trial commenced on May 9, 2014, in Cowlitz County, Washington. During the re-trial, the parties gave testimony and argued facts regarding child support orders and worksheet(s), also addressed was side issues regarding Homeschool agreements/objections, child tax credits awards and Day care matters. During the trial, it was discovered, the Appellant over paid his child support obligation by \$3,434 while the appeal was pending. The trial court abused it's discretion for the second time and

circumvented the Appellate court's remand, rather than correct the order and award Appellant relief from monies he had over paid in previous child support obligations. Further, the trail court awarded Respondent day care in efforts to side step spousal maintenance which was never ordered originally as the parties did not have a long term marriage. Under 10 years. Please see 42 U.S.C 416(d)(1), and Respondent is remarried. (RP 69 L 21 – 70 L 12.) The trial court further complicated this matter by removing herself from being the judicial officer to make final ruling on day care.

Lastly, Respondent never personally appeared before the court after 5/23/14, therefore her statements declarations and documentation was never made available for cross examination. Appellant pleaded his case and after day care was ordered and based on the substantial facts Appellant filed his second appeal here.

ER 801 – 804, 901 - 904(a(6),(C)), RCW 26.19.080(3), RCW 26.18.190, CR 59, CR 60. (RP pgs 1 – 105 (Re-trial & Presentations), (RP pg(s)106 – 119 (Daycare motion), (RP pg(s) 120 –124 Presentation hearing), (RP pg(s)125 -130 Motion for relief), (RP 131 – 148. 2nd Motion for Relief), (RP 150 – 154 Tax exemption hearing to coincide with CP 358). (CP #'s 280, 295, 297, 300, 302, 304, 308, 310, 312, 314, 317, 320 CT minutes Re: 5/9/14 & 5/23/14 hearings, 324 – 328, 331, 334, 335, 337 – 340, CT minutes Re: 2/2/15 hearing, 344, 346 – 349, 351, 352, 355 – 360,

CT minutes Re: 3/23/15 hearing, 364, CT minutes 3/30/15 hearing, CT minutes Re: 4/6/15 & 4/13/15 hearings, 366.

2. Factual History is as follows:

The parties were married on September 21, 2002. Separated in August 2010. The parties were officially divorced on 12/22/2011. A Decree, Parenting plan, Child support order and work sheet are incorporated with this finalization. Appellant has been diagnosed with Multiple Sclerosis since April, 2006 and has been medically retired on September 12, 2008. Respondent has been a Licensed Massage Therapist since 2011. # 43025-8-II, COA Unpublished Opinion filed 10/08/2013, pgs 1-18, COA Mandate filed 11/08/13. The parties have had continual litigating matters which need resolve so both parties can move on with their lives with both parents remaining involved with their children lives. ER 801 – 804, 901 - 904(a(6),(C)), RCW 26.19.080(3), RCW 26.18.190, CR 59, CR 60. RP 4 – 83, 85 – 105, 106 – 155 (more specifically, RP 26 Line 1 – 49 line 15, 52 line 2 – 60 Line 13, 65 line 17 – 105. (CP #'s 280, 295, 297, 300, 308, 310, 312, 314, 317, 320 CT minutes Re: 5/9/14 & 5/23/14 hearings, 324 – 328, 331, 334, 335, 337 – 340, CT minutes Re: 2/2/15 hearing, 344, 346 – 349, 351, 352, 355 – 360, CT minutes Re: 3/23/15

hearing, 364, CT minutes 3/30/15 hearing, CT minutes Re: 4/6/15 & 4/13/15 hearings, 366.

ARGUMENT

HERESAY

An out of court statement, or document, introduced to prove the truth of the matter asserted is generally inadmissible under the prohibition against hearsay. *ER 801(C)*, (1), 802, 804(b),(1),(3).

The documents presented in this case were hand written receipts offered to prove payment for day care expenses that were allegedly paid two or more years previously. The receipts and time sheets are not documents covered under *ER 904(a)(6)* that have any "guaranties of trustworthiness", nor are the receipts admissible under *ER 904* that establishes a list of documents that are admissible in court. Likewise the receipts and time sheets were not admissible under *ER 901*, nor were they self-authenticating under *ER 902*.

The receipts and time sheets were presented by the respondent, without a declaration from any of the day care providers, who presumably would have made the receipts at the time the services were paid for, nor did

any day-care provider appear as a witness to testify to the authenticity of the receipts.

The time sheets have the same fatal flaw. They were presented by the respondent without a declaration from the employer who would have made the document. Presenting the receipts and time sheets with a declaration from the respondent instead of the person who created the document is self-serving at best but fails to provide any foundation for the documents and adds nothing to their credibility. The only remaining possibility as an exception to the hearsay rule is if the documents are considered "properly authenticated business records".

RCW 5.45.020 states "A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission."

To qualify under the business records exception, the proponent must show that a record (1) is that of a business; (2) produced and kept in the regular course of that business; (3) memorializes an act, condition or event; (4) at or near the time of the act, condition or event; and (5) was produced under circumstances that suggest reliability. *State v Ben-Neth,34 Wn App* 600, 663 P2d 156 (1983). A document that is prepared for trial is not admissible under the business records exception if that document is not

made in the regular course of business. Owens v City of Seattle, 49 WN

187, 193 P,2d 560 (1956).

The receipts fail to meet the business record exception for several reasons. First they were submitted without any testimony. The respondent was not present at the hearing when they were submitted, they were accompanied by the respondent's declaration only. To qualify they should have been presented with the testimony of the day care providers as "the business" who would have been subject to cross examination about their authenticity. There was no indication that these receipts were "produced and kept in the regular course of business" because the respondent had testified previously that she "had no such records because she pays in cash and bartered services (provides massage in exchange for daycare). There is also question as to whether or not these receipts and time cards were made at the time of the event or as the appellant argued 2 years later for the purpose of trial. The receipts and time sheets also fail the 5th prong because nothing about them establishes that they were produced under circumstances that suggest reliability.

The appellant argued and established, at the hearing, multiple discrepancies with the documents, including the following: No testimony of the day care providers or declarations from them, some receipts are not signed but were signed later on a copied version in a sloppy attempt to

validate them, the receipts stiles are not consistent to individual providersin other words it appeared that the respondent purchased 3 different receipt
books and then filled them out in a hap hazard fashion. The invoice
numbers are inconsistent with each provider, and the writing style is the
same on numerous receipts but they have a different name and signature, all
of these irregularities point to them being manufactured by the respondent
years after the fact for the purpose of litigation and the fact that she was not
present to testify when they were admitted deprived the appellant of the
ability to cross examine and ferret out the truth of the matter.

TIME SHEETS

The respondent also presented time sheets in an attempt to support her claims for day care expense, however, the time sheets suffered from the same flaws as the receipts.

The respondent did not testify as to their authenticity, nor did the business owner that presumably would have made the time sheets. In addition it appeared that all the time sheets were made and printed on the same date for the purpose of trial. Furthermore the time sheets themselves do not establish or support the respondent's claims. The time sheets legend at the bottom shows (s) as being scheduled time and (A) being actual time since the respondent may not have actually worked those hours and if she had they would have had an (A) to establish that time was actually worked.

Again because there was no testimony from the business /employer there was no cross examination to determine if the time sheets were accurate.

EXCHANGE / ACTUALLY INCURRED

The appellant also objected to a large portion of the day care expenses alleged by the respondent because, as the respondent claimed in declarations and receipts, that she did not actually pay for day care but again provided services in exchange for day care. According to the respondent she would provide Massage to her mother in exchange for day care services.

The respondent openly admits that she has never paid her mother for day care. Respondent claims that in exchange for daycare services provided by her mother the respondent provided her with massage therapy rather than cash. The respondent reasoned that because she provided the massage to her mother the appellant should be required reimburse the respondent for her time. In other words the respondent is seeking payment for expenses that were not actually incurred.

It was clearly established in **IN RE MARRIAGE OF Daniel FAIRCHILD, 207 P.3d 449 (2009)** that the parent seeking reimbursement for day care expenses must produce adequate proof of incurred expenses in order to prevent a windfall. In this case the receipts, if they were admissible, would only establish that no actual expense had been incurred.

Because the respondent did not pay for the day care the appellant is not required to pay for hypothetical expenses based on what the respondent believes to be fair value for her time.

The respondent's own claims and receipts make it clear that she is attempting to abuse the day care award to produce a "windfall" income for herself in lieu of spousal support.

Lastly, During the retrial on 5/9/14, the parties gave sworn testimonies. Respondent gave contradicting testimony. Appellant testified against homeschooling and argued facts relevant and sufficient enough to prevail over the day care judgment and child tax credit rulings.

Nevertheless, Trial Court failed to consider relevant facts, disregarded the parties sworn testimonies and appellant's objections. On 5/9/14 & 5/23/14,

Trial Court Judicial Officer Marilyn Haan upheld the homeschooling, then awarded day care and both child tax credits to Respondent and granted

Respondent 3 additional weeks to manufacture day care documentation even after Respondent repeatedly failed to timely provide her work schedules and day care receipts. Even after she breeched the parties agreement through trickery and deception.

43025-8-II, COA Mandate and Unpublished Opinion – pgs 1 – 18.

ER 801 – 804, 901 - 904(a(6),(C)), RCW 26.19.080(3), RCW 26.18.190,

CR 59, CR 60. (CP #'s 280, 295, 297, 300, 302, 304, 308, 310, 312, 314,

317, 320 CT minutes Re: 5/9/14 & 5/23/14 hearings, 324 – 328, 331, 334, 335, 337 – 340, CT minutes Re: 2/2/15 hearing, 344, 346 – 349, 351, 352, 355 – 360, CT minutes Re: 3/23/15 hearing, 364, CT minutes 3/30/15 hearing, CT minutes Re: 4/6/15 & 4/13/15 hearings, 366. (RP pg(s) 1 – 83 (Re-trial), (RP pgs 84 – 105 (Presentation Hearing) (RP pg(s)106 – 119 (Daycare motion), (RP pg(s) 120 –124 Presentation hearing), (RP pg(s)125 -130 Motion for relief), (RP 131 – 148. 2nd Motion for Relief), (RP 150 – 154 Tax exemption hearing to coincide with CP 358).

VI. CONCLUSION

The trial court erred when it determined that it had continued subject matter jurisdiction in this case contrary to the UCCJEA, because neither the parents nor the children were or had been residents of Washington for 1 ½ years. Respondent and children more than 4 years. In addition the trial court erred when it prejudiced against Appellant in efforts to circumvent the Court of Appeals intent of providing Appellant relief from his child support order where he was not receiving credit from his SSD beneficiary award for his children and over paid due to the trial courts abusive discretion. Trial court erred again when it awarded day care expenses based on inadmissible hearsay. In addition it erred by awarding reimbursement for day care expenses that the respondent had not "actually incurred".

My name is Jeremiah J. Larsen. I am not an attorney. I am not well versed in Law. I have done my very best to properly address this matter and I can honestly say, now for the second time, this has been the hardest challenge of my life. However, I am humbly asking the Court of Appeals to look this matter over in depth. I am requesting the Court of Appeals to reverse the child tax credit award, vacate the daycare award in it's entirety including Respondent's daycare judgment # 15-9-00257-7 and reinstate Appellant's child support Judgment # 14-9-01223-0 which is from my over payment of child support from the trial court's previous orders while the first appeal was pending and without having to go before the trial court again. I do not believe I have ever been granted a fair trial absent of prejudice especially with Judicial Officer Marilyn K. Haan. I made attempts to share this fact with the trial court, however, I now understand that one Superior Court does not have the jurisdiction to over rule another Superior Court's ruling. Many of these rulings are out of the ordinary as admitted by the Judicial officer herself.

Appellant prays this court reverse the judgment in this matter and remand the case back to a different superior court.

Thank you kindly for your time as I sincerely appreciate it greatly.

DECLARATION OF SERVICE The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

Jeremiah Jarsen

APPENDIX

RCW 26.18.190 Compensation paid by agency, Social Security Administration on Children's behalf

RCW 26.19.080(3, 4) Day care not incurred

RCW 43.215.010 Definitions re: Day care

RCW 43.215.250 License Required

ER 801 Hearsay definitions (a),(b),(c),(d,(1))

ER 802 Hearsay Rule

ER 804 Hearsay exceptions(b,(1),(3))

ER 901 Requirement of Authentication

ER 902 (11, 12)

ER 904 (a,(6))

CR 59 New trial, Reconsideration, and Amendment of Judgments

CR 60 Relief from Judgment or Order

Case Law:

No. 26718-7-III. Re: Daniel E. FAIRCHILD, Appellant, V. Janis E. DAVIS, f/k/a Janis E. Fairchild, Respondent.

No. 25658-8-III Re: Ritchie Norman, Appellant, V. Julie Fairbanks

No. 55926 - VI Re: Henry L Pollard, appellant V. Felicia A. Pollard, Respondent

Text of Section 3 Personal Rights; No person shall be deprived of life, liberty, or property, without due process of law.

COURT OF APPEALS
DIVISION II

2016 FEB 18 AM 11: 57

STATE OF WASHINGTON

BY DEPUTY

COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

Cowlitz County Superior Court Divorce trial proceeding			Appellate Court Cause # 47492-1-II					
		,	Return of service re: Appellant's brief					
Jeremiah J. Larsen (Appellant) Rebecca A. Larsen (Respondent)			Cowlitz County Superior Court Case No. 10-3-00611-1					
l Decl	are:							
1.	I am over the age of 18 years, and I am a party to this action.							
2.	I served the following documents to Rebecca Bamberg (FKA Larsen)							
	Appellant's corrected Brief							
3.	The date, time and place of service were (if by mail refer to Paragraph 4 below):							
	Date:							
	Address:							

4. Service was made:

[X] (check this box only if there is a statute authorizing service by mail) by mailing a copy postage prepaid to the person requiring service by any form of mail requiring return receipt. (Tape return receipt below.)

The copy was mailed on February 16, 2016.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Longview, V	WA on Februa	ary 16, 2016				
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Return of Service (RTS) - Page 2 of 2 WPF DRPSCU 01.0250 (6/2010) - CR 4(g), RCW 4.28.080(15